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OFFICE OF PETITIONS

In re Application of
Claudio Desanti et al.
Application No. 09/964,702
Filed: September 27, 2001
Attorney Docket No: 112025-0461

ON PETITION

This is a decision on the petition filed June 29, 2006, to withdraw the holding of abandonment, which is being treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned on December 7, 2005, for failure to file a timely response to the non-Final Office Action mailed September 6, 2005, which set a three (3) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed June 20, 2006. Petitioner asserts that the non-Final Office Action was never received.

The file record discloses that the Office Action was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner has provided a copy of the docket report, wherein receipt of the Office Action mailed September 6, 2005 would have been filed, had it been received, to show that the Notice was not received.

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the non-Final Office Action mailed September 6, 2005, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the Office Action.

In view of the facts set forth in the petition, it is concluded that the Office Action was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

This matter is being referred to Technology Center 2652 for appropriate handling of treatment of the amendment filed June 29, 2006 in response to the non-Final Office Action mailed September 6, 2005.

Telephone inquiries concerning this matter should be directed to the undersigned
Petitions Attorney at (571) 272-3212.

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